

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1961/1989.

DATE OF DECISION: March 12, 199 $\frac{1}{2}$.

A.K. Bhasin	Applicant.
Shri Vijay Mehta	Advocate for the Applicant.
V/s.		
Union of India & Ors.	Respondents.
Shri Arun Sharma and Shri P.P. Khurana	Advocates for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether his lordship wishes to see the No. fair copy of the judgement?
4. To be circulated to all Benches of the No. Tribunal?

(Signature)
(P.C. Jain),
Member (A)

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JUDGEMENT

The applicant, who was working as Superintendent B/R I under the Garrison Engineer (Projects), Meerut Cantt., has, in this application under Section 19 of the Administrative Tribunals Act, 1985, assailed his transfer from Meerut to Mhow vide order dated 10.4.1989 (Annexure A-2). The applicant's case is that his transfer is not in accordance with the guidelines on the subject of transfers issued on 30.12.83 and modified on 13.3.1987 (Annexure A-8). His representations in this matter have either been rejected or not entertained. He has also pleaded that the order of transfer is mala-fide, arbitrary and flouts all norms of natural justice, good conscience, equity and fair play and that he has been transferred with a view to cause mere harassment to him.

2. The respondents' case, in brief, is that vide letter dated 25.3.1989 from Engineers' Branch, HQ Central Command, Lucknow Cantt., two persons in the grade of Superintendent B/R I were to be accommodated in Meerut on return from tenure stations and accordingly, vide CNE, Meerut Cantt. order dated 14.4.1989 (Annexure A-1), the applicant, whose station seniority was 17.8.83 and had the longest stay, was ordered to be transferred. They have denied that the transfer is in violation of the guidelines

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laid down for the purpose. Allegations of harassment, malafide, arbitrariness, etc. have also been refuted.

3. I have perused the documents on record and have also heard the learned counsel for the parties.

4. In his application, the applicant has stated that the contention of the respondents that the applicant is the longest stayee in Meerut Cantt. in his grade is not admitted. He has, however, not furnished any other information to the contrary. On the grounds of malafide, he has not given any particulars whatsoever nor has he made any person a party by name; it has just been mentioned that his transfer is malafide. This plea is, therefore, not sustainable. The plea of arbitrariness is also not tenable in view of the fact that he has not been able to contradict that he is the longest stayee in Meerut. The question of arbitrariness, therefore, does not arise. Nothing has been shown to substantiate his contention about violation of the principles of natural justice, fair play or equity.

5. The applicant has stated that he is prepared to move from Meerut, but as per the guidelines, he should be posted to one of the three stations of his choice, which he indicated in his representation dated 30.4.1989. The respondents have stated in their reply that transfers are not made as per choice of the individual, but as per the necessity and exigencies of service. There was a requirement at Mhow at the time the applicant's transfer order was issued and that he had become surplus at Meerut in view of the orders of the competent authority to accommodate others on repatriation from tenure stations. The Department had, therefore, no other alternative except to employ him at the best suited place for him and where a vacancy exists irrespective of the fact that there may be vacancies at other places.

6. In his representations, the applicant emphasised the inconvenience and the family problems which would arise

due to his transfer from Meerut. The problems mentioned by him are common in the case of most of the Government servants and these cannot be a ground for interference through a process of judicial review in the right of the employer to deploy his human resources in the best interest of administration. It is not in dispute that the applicant is subject to all-India transfer liability and has been in Meerut for more than six years.

7. The learned counsel for the applicant cited the judgements in the following three cases in support of his case: -

- (1) B. Varadha Rao Vs. State of Karnataka and Others (AIR 1986 S.C. 1955).
- (2) Charanjit Lal Vs. Union of India and Others (1987) 3 Administrative Tribunals Cases 311.
- (3) K.K. Jindal Vs. General Manager, Northern Railway (ATR 1986 (1) CAT 304).

8. These judgements do not help the applicant in the facts and circumstances of the case. In the case of Charanjit Lal (supra), the transfer of the petitioner therein was held not to have been made in public interest as it was done in order to accommodate another employee from another station and without correctly calculating the period of stay of the petitioner. There were certain other factors peculiar to that case. The judgement in the case of K.K. Jindal (supra) came up for consideration before a Full Bench of the Central Administrative Tribunal in the case of Kamlesh Trivedi Vs. Indian Council of Agricultural Research and Another (Full Bench Judgements (CAT) - 1986-1989 - p. 80), wherein the following observations, inter-alia, were made: -

"17. It would thus be seen that any transfer made in violation of transfer policy by itself would not be a ground for quashing the order of transfer for, as observed by the Supreme Court in Varadha Rao's case, instructions embodying the transfer policy are more in the nature of guidelines to the officers who are vested with

the power to order transfers in the exigencies of administration than vesting any immunity from transfer in the Government servants or a right in the public servant. In fact, transfer policy enunciated by the Government or other authorities often allows a large amount of discretion in the officer in whom the authority to transfer is vested. However, as any transfer has to be made in public interest and in the exigencies of administration, if a complaint is made, that it is not ordered bona fide or is actuated by mala fides or is made arbitrarily or in colourable exercise of power, such a complaint is open to scrutiny. The fact that the transfer is ordered in derogation of the transfer policy would impose an obligation on the Tribunal to find out if it was necessitated in the exigencies of administration. If it is found that it is against the general policy of transfer, it may lend some *prima facie* basis to the allegation that it is an arbitrary order. But merely because the order is not in conformity with the transfer policy, it cannot be quashed for the competent authority is generally vested with the discretion to order transfer in the exigencies of service and in public interest. Hence the obligation to show that it is made mala fide or in colourable exercise of power still lies upon the applicant. While the burden of proof lies on the applicant, the onus may shift from time to time and ultimately it is for the Tribunal to determine whether the allegation of the applicant that the order of transfer is arbitrary, mala fide or made in colourable exercise of power is established and, therefore, deserves to be quashed. If that is established, the order can certainly be quashed. That does not mean that before making an order of transfer, an enquiry should be conducted in accordance with the principles of natural justice into the allegations, if any, made against the officer sought to be transferred.

9. In B. Varadha Rao's case (supra), the main point involved was whether an order of transfer of a Government servant made by an authority other than the Government itself, was appealable before the Government under Rule 19 of the

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Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. In that case also, it was held that the administrative instructions do not vest any immunity from transfer in the Government servants, and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post.

10. Recently, in the case of Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani (Judgement Today 1989 (3) SC 20), the Supreme Court held that transfer from one place to another is necessary in public interest and efficiency in public administration, and whenever a public servant is transferred, he must comply with the order, but if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If it does not happen, the concerned public servant must carry out the order of transfer. In another case of Union of India Vs. H.N. Kirtania (Judgement Today 1989 (3) SC 131), the Supreme Court held that transfer of a public servant made on administrative ground or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on grounds of mala-fides.

11. In the case before me, there are no statutory rules and, as such, the question of violation of such rules does not arise. The administrative instructions / guidelines do not confer any legal right which can be enforced through a court of law. There is no substance in the allegations of mala-fide or arbitrariness, nor is there anything to suggest even indirectly that the applicant has been transferred as a measure of punishment.

12. In view of the above discussion, the application is devoid of any merit and is accordingly dismissed. Parties to bear their own costs.

(P.C. Jain) 12/3/1990
MEMBER(A)